IN THE

Supreme Court of the United States

October Term, 1976

No. 76-166

LEONARD DIXON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The petitioner, Leonard Dixon, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on July 6, 1976.

OPINION BELOW

The opinions[1] of the Court of Appeals, not yet report-

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[1] A second opinion was rendered by the Court of Appeals upon rehearing. Both opinions appear in the appendix.

ed, appear in the appendix hereto (Opinion filed April 26, 1976 [Appendix "B"], Appendix pp. 2 - 6; Opinion filed July 6, 1976 [Appendix "D"], Appendix pp. 7 - 12). No opinion was rendered by the District Court for the Central District of California.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on July 6, 1976 (Appendix "D"). This petition for certiorari was filed within 30 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. **Does the privilege against self-incrimination and the right to confrontation of witnesses and to a jury trial prevent the acceptance by a District Court of a stipulation which involves a waiver of those rights where the record is silent as to a defendant's agreement to waive his rights?**

2. **Does the due process clause or Rule 32, F. R. Crim. P., prevent a district judge from hearing a case after he has received damning information about a defendant in an *ex parte* presentation by the prosecution?**

3. **Upon showing that the Internal Revenue Service uses grand jury subpoenas to further its own investigations, is a criminal defendant entitled to disclosure of the names of persons called to testify about him to the grand jury?**

STATUTORY PROVISIONS INVOLVED

United States Code, Title 18:

"§ 371: **Conspiracy to commit offense or to defraud United States.** If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both."

United States Code, Title 26:

"§ 7201: **Attempt to evade or defeat tax.**
Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution."

Federal Rules of Criminal Procedure:

"Rule 32. **Sentence and Judgment.**

" . . .

"(c) Presentence Investigation.

(1) When Made. The probation service of the court shall make a presentence investigation and report to the court before the imposition

of sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record.

"The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time."

STATEMENT OF THE CASE

On August 29, 1973, Leonard Dixon was indicted by a federal grand jury in Los Angeles. Count I charged Dixon and two co-defendants with the crime of conspiracy to evade income taxes in violation of 18 U.S.C. § 371. Counts II through VI charged Dixon with evasion of income taxes for the years 1966 through 1970 in violation of 26 U.S.C. § 7201. Counts VII and VIII, charging violations of 26 U.S.C. § 7206(1), were dismissed prior to trial on motion of the government.

Dixon was arraigned on September 5, 1973. On September 6, the government filed an affidavit and other information with the district judge in support of its contention that bail should be set in the sum of $100,000.00. In spite of the government's urging, bail was set at $5,000.00.

On October 29, 1974, Dixon filed a motion to enjoin use by the government of evidence obtained as the result of abuse of the grand jury process.

> "In support of his motion for injunction appellant presented an affidavit of a former special agent of the Intelligence Division of the IRS to the effect that it was in the past common practice of the IRS to use grand jury subpoenas not to further grand jury investigations of crime, but to further IRS tax investigations. When defense counsel could not advise the court what testimony he expected to obtain from other witnesses, and upon finding no showing of abuse in this particular case, the district court struck appellant's motion." (Appendix p. 9.)

On November 19, the motion was stricken by the District Court as being improvidently filed.

Jury trial began on November 20, 1974. During the trial, the defense stipulated that Dixon had income and taxes due as charged in Counts II through VI. On November 26, Dixon was found guilty as charged in Counts I through VI.

Dixon was sentenced on January 7, 1975 to serve four consecutive two-year terms, and two additional two-year terms concurrent with the consecutive terms. In addition, Dixon was fined a total of $6,000.00.

REASONS FOR GRANTING THE WRIT

1. Where A Criminal Defendant Enters Into A Stipulation Which Substantially Reduces The Government's Burden Of Producing Evidence, The Record Must Reflect A Waiver Of That Defendant's Constitutional Rights.

Because of the waiver of constitutional rights which takes place when a criminal defendant enters a plea of guilty, this Court has held that a guilty plea must be accompanied by explicit waivers of those rights. In both federal and state courts, a defendant's right to a jury trial and to the assistance of counsel, his right to confront witnesses and to present a defense, and his privilege against self-incrimination must be waived in order for his plea to be valid. Those waivers must appear in the record of the trial court; they cannot be presumed from a silent record. *McCarthy v. United States,* 394 U.S. 459 (1969); *Boykin v. Alabama,* 395 U.S. 238 (1969); Rule 11(c), F. R. Crim. P.

While the instant case does not involve a plea of guilty, it does involve a stipulation entered into by defense counsel which substantially affected petitioner's constitutional rights. See *Brookhart v. Janis,* 384 U.S. 1 (1966); *In re Mosley,* 1 Cal. 3d 913, 83 Cal. Rptr. 809, 464 P.2d 473 (1970). Here, in a tax evasion case, defense counsel stipulated to the amounts of income and taxes due for a period of five years as alleged by the government. The facts stipulated to were sufficient to sustain a conviction. *Holland v. United States,* 384 U.S. 121, 139 (1954); *United States v. Fahy,* 510 Fed. 302 (2d Cir. 1974). That stipulation operated

to limit petitioner's constitutional rights and should have been accompanied by an explicit waiver of those rights.

This Court dealt with a similar situation in *Brookhart v. Janis, supra.* There, the defense attorney agreed to a trial procedure whereby the defendant would be found guilty if the state produced legally sufficient evidence of guilt, the defendant agreeing that he would neither cross-examine the state's witnesses nor present evidence on his own behalf. This Court, characterizing the "prima facie case" procedure in *Brookhart* as "the practical equivalent of a plea of guilty," *Brookhart v. Janis, supra,* 384 U. S. at 7, reversed Brookhart's conviction, holding that the waiver of his constitutional rights was not a valid one.

The California Supreme Court dealt with a similar problem in *In re Mosely, supra.* There, defense counsel stipulated that his client's case could be submitted for decision based upon the trial court's reading of a transcript of the preliminary examination at which the defendant was held to answer. Relying on *Boykin* and *Brookhart,* the California Supreme Court held that the stipulation to submit the case for decision involved a waiver of the defendant's constitutional rights which should have been reflected on the record. *In re Mosley, supra,* 1 Cal. 3d at 924-25, 83 Cal. Rptr. at 815, 464 P.2d at 479.

Here, the practical effect of defense counsel's stipulation was a waiver of petitioner's right to confront and cross-examine the government's witnesses. In addition, it was an admission of a substantial part of the government's case, an admission to sufficient evidence to

support a conviction. See *McCarthy v. United States, supra,* 394 U.S. at 466. It cannot be presumed that petitioner knew of the rights being waived at the time of the stipulation (*Barker v. Wingo,* 407 U.S. 514, 525-26 (1972); *Glasser v. United States,* 315 U.S.60, 70-71 (1942)), and it was thus error for the District Court to accept that stipulation.

2. After He Has Been Exposed By The Prosecution To The Sort Of Information Which Would Be Included In A Presentence Report, The Due Process Clause And Rule 32, F. R. Crim. P., Require That A District Judge Recuse Himself.

Rule 32(c)(1), F. R. Crim. P., provides for the preparation of a presentence report by the probation service of the District Court to aid the judge in sentencing. The rule prohibits the disclosure of the contents of the presentence report to the judge prior to a finding of guilt, and an earlier relevation of its contents requires reversal of a defendant's conviction. *United States v. Park,* 521 F.2d 1381 (9th Cir. 1975); *United States v. Small,* 472 F.2d 818 (3d Cir. 1972).

Here, rather than a presentence report, the district judge was given information by the *government* about the defendant. That information dealt with bail and was not disclosed to the defense. See *United States v. Powell,* 487 F.2d 325, 328 (4th Cir. 1973) (disclosure of presentence reports should be favored); 8A W. MOORE, FEDERAL PRACTICE para. 32.03(4) (cipes ed. 1965).

While the stated purpose of the report to the district judge was to enable him to intelligently set bail, its effect

was to provide him with information relevant to his sentencing decision. That information was not disclosed to the defense and there was no opportunity to rebut it. It was provided by the prosecution rather than a neutral probation officer. *Haller v. Robbins,* 409 F.2d 857, 859 (1st Cir. 1969). It was followed by a harsh sentence.

It is submitted that the procedure below violated the due process clause and Rule 32. It has been argued that not only fairness, but the appearance of fairness, must be an element of criminal cases. *Mitchell v. Sirica,* 502 F.2d 375, 376 (D.C. Cir. 1974) (MacKimnon, J., dissenting); Note, *Disqualification of a Federal Judge for Bias,* 57 Minn. L. Rev. 749, 759-60 (1973); Note, *Disqualification of Judges for Bias in the Federal Courts,* 79 Harv. L. Rev. 1435 (1965). Here, the practice followed by the court and the government not only looked unfair, it was unfair. The disclosure of background information about a defendant to the district judge (*McNabb v. United States,* 318 U.S. 332 (1943)) who will try his case, without the disclosure of that information to the defense, cannot be tolerated by this Court. *United States v. Solomon,* 422 F.2d 1110, 1120-21 (7th Cir. 1970); see *Smith v. United States.* 360 U.S. 1, 17-18 (1959) (Clark, J., dissenting).

3. The Showing Of Governmental Abuse Of The Grand Jury Process Was Sufficient To Require A Hearing On That Issue.

Because of the importance of the grand jury to the federal judicial system, its actions are less subject to judicial scrutiny than are those of the executive branch. *Compare,*

United States v. Dionisio, 410 U.S. 1 (1973), *with Davis v. Mississippi,* 394 U.S. 721 (1969). Its powers must be broad in order to allow it to fulfill its historical function. *Costello v. United States,* 350 U.S. 359, 364 (1959).

It is no doubt a result of the judiciary's reluctance to examine the workings of the grand jury that prosecutors abuse the grand jury process. In spite of statements about the need to keep the grand jury from becoming the tool of the prosecutor (*United States v. Fisher,* 455 F.2d 1101, 1105 (2d Cir. 1972)), the grand jury system is often misused. Note, *The Grand Jury,* 9 Colum. J. L. & Soc. Prob. 681 (1973).

Here, the defense made a showing regarding a common form of misuse of the grand jury, the use of grand jury subpoenas to aid the prosecutor in obtaining evidence. Had the defense been able to pursue that issue by presenting evidence, unlawful practices might well have been shown (see, *Durbin v. United States,* 221 F.2d 520 (D.C. Cir. 1954); *United States v. Pack,* 150 F. Supp. 262 (Del. 1957)), and suppression of the evidence obtained through those practices would have been appropriate.

The showing was sufficient to require a hearing and, given the limited access to information which results from the provisions of Rule 6(e), F. R. Crim. P., was all that a defendant could set forth. Only the prosecutors knew what went on before the grand jury, and it was error for the District Court to dismiss petitioner's motion without even requiring a general response from the government.

CONCLUSION

For the reasons set forth above, it is respectfully requested that a writ of certiorari issue to review the judgment of the Court of Appeals.

Respectfully submitted,

LAW OFFICES OF
BURTON MARKS

By Burton Marks

Counsel for Petitioner

INDEX TO APPENDICES

APPENDIX "A"

LETTER DATED APRIL 26, 1976

From the Office of the Clerk, United States Court of Appeals for the Ninth Circuit, U. S. Court of Appeals and Post Office Building, 7th & Mission Streets, P. O. Box 547, San Francisco, California 94101.

Re: 75-1178, USA vs. LEONARD DIXON

Dear

An opinion was filed and a judgment entered in the above case today, April 26, 1976, vacating and remanding in part, affirming in part, the judgment of the court below.

You have (14) days, from the above date, in which to file a petition for rehearing.

The mandate of this court shall issue (21) days after entry of judgment unless the court enters an order otherwise. If a petition for rehearing is filed and denied, the mandate will issue (7) days after the entry of the order denying the petition.

Sincerely,

Emil E. Melfi, Jr.
Clerk of Court

See Rules: 36, 40(a) and 41(a) of the Federal Rules of Appellate Procedure

OPINION OF THE COURT BELOW
[APRIL 26, 1976]

In the United States Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. LEONARD DIXON, Defendant-Appellant.

No. 75-1178.

On Appeal from the United States District Court for the Central District of California

Before: MERRILL, WRIGHT and CHOY, Circuit Judges

MERRILL, Circuit Judge

This appeal is from conviction of conspiring to evade payment of income taxes and evasion of payment of income taxes for the years 1966 through 1970.

1. *Sufficiency of Evidence*

Appellant contends that the Government has failed to prove essential elements of the cash-expenditure variant of the net-worth method of proving taxable income; that the Government has failed to establish that unreported income attributed to appellant was earned in the year for which it was taxed; that the Government failed to establish appellant's net worth at the

opening of the taxable period in question to refute the possibility that expenditures in excess of reported income could be attributed to resources on hand at the beginning of the tax period.

Appellant's principal defense at trial appears to have been that he did not realize that income derived from illegal sources was taxable. The contentions advanced on appeal were not asserted at trial. Instead, appellant stipulated to the amounts of gross income and tax owing as specified in the indictment, and admitted that the figures in his delinquent tax returns correctly reflected his gross income for the years in question. These open court admissions relieved the Government from the necessity of making proof upon the subjects dealt with and sufficiently established the elements of the crime now challenged. No corroboration was necessary, as may be required in the case of an extra-judicial admission.

2. *Abuse of Grand Jury Process*

Appellant asserts as error the district court's order striking appellant's motion to enjoin use of evidence obtained by what he contends was abuse of the grand jury process. In support of his motion for injunction appellant presented an affidavit of a former special agent of the Intelligence Division of the IRS to the effect that it was in the past common practice of the IRS to use grand jury subpoenas not to further grand jury investigations of crime, but to further IRS tax investigations. When defense counsel could not advise the court what testimony he expected to obtain from

other witnesses, and upon finding no showing of abuse in this particular case, the district court struck appellant's motion.

Appellant's basic contention is that he was denied due process by the district court's refusal to allow him to show that evidence used against him was illegally obtained. The nature of the asserted illegality—abuse of the grand jury process—is such that a hearing upon the question would involve a breach of grand jury secrecy[1] and the delay and disruption of the orderly functioning of the criminal justice system. Accordingly hearing is not lightly granted; one is not entitled to hearing "to enable [him] to satisfy [his] unsupported suspicions." *Lawn v. United States,* 355 U.S. 339, 350 (1958). Moreover, the grant of hearing in such matters, involving grand jury secrecy, is a matter of judicial discretion. See *Pittsburgh Plate Glass Co. v. United States,* 360 U.S. 395, 398-99 (1959).

Appellant has not met his burden here. The fact that IRS has improperly used the grand jury for its own purposes on occasions in the past gives rise to no more than a doubtful inference that they may have acted in such fashion in this case. This inference (if we concede that it is such) is rebutted by the fact that an indictment in fact did result. See *Beverly v. United States,* 468 F.2d 732, 749 (5th Cir. 1972). We can, then, presume that the grand jury was properly pursuing an inquiry as to appellant's guilt of crime. We find neither error

[1] Appellant explicitly asked that the Government be required to disclose to him "the names and addresses of all witnesses called before any Grand Jury to give evidence with respect to the instant prosecution." Moreover, appellant's apparent purpose in seeking the hearing was to learn "what witnesses and what evidence were produced from the use of Grand Jury subpoenas which were simply used for the purpose of funneling information from the Grand Jury into the hands of the Internal Revenue Service."

nor abuse of discretion in the action of the district court in striking appellant's motion.

3. *Sentence*

The maximum sentence for tax fraud is five years or $10,000, or both. Appellant was found guilty on six counts. On the first four counts he received sentences of two years to run consecutively. On the two last counts he received sentences of two years to run concurrently with the sentences on the first four counts. On each of the six counts he was fined "$1,000 together with the costs of prosecution." In sentencing, the court ordered: "IT IS FURTHER ADJUDGED that the defendant stand committed until the fines herein imposed are paid or until he is otherwise discharged by due course of law."

Appellant contends that this language is ambiguous, and we agree. We cannot tell what the district judge meant by "otherwise discharged by due course of law." If the language means discharged by service of the maximum sentence, then the court was talking about twenty years. If the language means discharged by service of the sentence imposed, the court was talking about eight years. It is not clear whether it includes the possibility of parole. What, if any, effect nonpayment is to have on the concurrent sentences is not clear.[2]

The Government contends that appellant's complaint is premature. In our judgment, however, he is entitled to a

[2] Appellant also questions the constitutionality of extending a term of imprisonment for nonpayment of fines without affording him a reasonable opportunity to pay and irrespective of his ability to pay. See *Tate v. Short,* 401 U.S. 395 (1971). In addition, he contends that the sentences imposed constitute cruel and unusual punishment. We think that a determination of these issues should await clarification of the sentence by the district court.

clarification at this time. Parole rights may well be involved.

Appellant contends that severity of sentence was enhanced by information contained in affidavits by government agents, the substance of which was not disclosed to him. The district court, however, expressly disclaimed reliance on the affidavits. We find no abuse of discretion in this connection.

Sentence is vacated and the matter is remanded for resentencing in order that ambiguities may be resolved respecting the consequence of nonpayment of fines.

In all other respects, judgment is affirmed.

No costs are allowed.

APPENDIX "C"

ORDER ON REHEARING

In the United States Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. LEONARD DIXON, Defendant-Appellant.

No. 75-1178

[FILED July 6, 1976]

Before: MERRILL, WRIGHT and CHOY, Circuit Judges

Upon appellee's motion for rehearing oral argument is dispensed with and the motion is entertained upon the moving and opposition papers. Rehearing is granted. The opinion

heretofore filed herein April 26, 1976, is withdrawn and is superseded by the opinion filed this day.

With the filing of this opinion the panel has voted to deny appellant's motion for panel rehearing. Further, Judges Wright and Choy have voted to reject appellant's suggestion for rehearing in banc, and Judge Merrill recommends rejection.

The full court has been advised of the suggestion for in banc hearing and the views of the panel with respect thereto and of its proposed modification of opinion as set forth under "4. *Bail Affidavits*" of the superseding opinion filed this day. No judge of the court has requested a vote on the suggestion for rehearing in banc.

Appellant's petition for rehearing is denied and the suggestion of rehearing in banc is rejected.

APPENDIX "D"

OPINION OF THE COURT BELOW
(Substitute for previous opinion filed April 26, 1976)
[FILED JULY 6, 1976]

In the United States Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. LEONARD DIXON, Defendant-Appellant.

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Appellant's principal defense at trial appears to have been that he did not realize that income derived from illegal sources was taxable. The contentions advanced on appeal were not asserted at trial. Instead, appellant stipulated to the amounts of gross income and tax owing as specified in the indictment, and admitted that the figures in his delinquent tax returns correctly reflected his gross income for the years in question. These open court admissions relieved the Government from the necessity of making proof upon the subjects dealt with and sufficiently established the elements of the crime now challenged. No corroboration was necessary, as may be required in the case

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Appellant asserts as error the district court's order striking appellant's motion to enjoin use of evidence obtained by what he contends was abuse of the grand jury process. In support of his motion for injunction appellant presented an affidavit of a former special agent of the Intelligence Division of the IRS to the effect that it was in the past common practice of the IRS to use grand jury subpoenas not to further grand jury investigations of crime, but to further IRS tax investigations. When defense counsel could not advise the court what testimony he expected to obtain from other witnesses, and upon finding no showing of abuse in this particular case, the district court struck appellant's motion.

Appellant's basic contention is that he was denied due process by the district court's refusal to allow him to show that evidence used against him was illegally obtained. The nature of the asserted illegality—abuse of the grand jury process—is such that a hearing upon the question would involve a breach of grand jury secrecy[1] and the delay and disruption of the orderly functioning of the criminal justice system. Accordingly hearing is not lightly granted; one is not entitled to hearing "to enable [him] to satisfy [his] unsupported suspicions." *Lawn v. United States,*

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[1] Appellant explicitly asked that the Government be required to disclose to him "the names and addresses of all witnesses called before any Grand Jury to give evidence with respect to the instant prosecution." Moreover, appellant's apparent purpose in seeking the hearing was to learn "what witnesses and what evidence were produced from the use of Grand Jury subpoenas which were simply used for the purpose of funneling information from the Grand Jury into the hands of the Internal Revenue Service."

355 U.S. 339, 350 (1958). Moreover, the grant of hearing in such matters, involving grand jury secrecy, is a matter of judicial discretion. See *Pittsburgh Plate Glass Co. v. United States,* 360 U.S. 395, 398-99 (1959).

Appellant has not met his burden here. The fact that IRS has improperly used the grand jury for its own purposes on occasions in the past gives rise to no more than a doubtful inference that they may have acted in such a fashion in this case. This inference (if we concede that it is such) is rebutted by the fact that an indictment in fact did result. See *Beverly v. United States,* 468 F.2d 732, 749 (5th Cir. 1972). We can, then, presume that the grand jury was properly pursuing an inquiry as to appellant's guilt of crime. We find neither error nor abuse of discretion in the action of the district court in striking appellant's motion.

3. *Sentence*

The maximum sentence for tax fraud is five years or $10,000, or both. Appellant was found guilty on six counts. On the first four counts he received sentences of two years to run consecutively. On the two last counts he received sentences of two years to run concurrently with the sentences on the first four counts. On each of the six counts he was fined "$1,000 together with the costs of prosecution." In sentencing, the court ordered: "IT IS FURTHER ADJUDGED that the defendant stand committed until the fines herein imposed are paid or until he is otherwise discharged by due course of law."

Appellant contends that this language is ambiguous. We disagree. It is taken from the opinion of this court in *Wagner v. United States,* 3 F.2d 864, 865 (9th Cir. 1925).

"Otherwise discharged by due course of law" has reference to the right of a prisoner who is unable to pay his fine to obtain release upon proper showing after thirty days imprisonment for nonpayment, pursuant to 18 U.S.C. § 3569 (successor to Rev. St. § 1042, which was the statute before the court in *Wagner*).

Appellant attacks the constitutionality of extending a term of imprisonment of an indigent prisoner solely for nonpayment of the fine. Resolution of this question, in our judgment, must await the event. It is far from certain that grievance ever will occur. We find no merit in appellant's contention that the sentence constituted cruel and unusual punishment.

4. *Bail Affidavits*

Appellant contends that severity of sentence was enhanced by information contained in affidavits by government agents, the substance of which was not disclosed to him. The district court, however, expressly contends that references made by the judge in imposing sentence to appellant's past activities show that the judge in fact did rely on information obtained from the affidavits and that his disclaimer should be rejected. Information supporting the judge's remarks, however, was supplied by appellant's own admissions at trial and by a presentence report received by the judge prior to sentencing. We see no occasion for rejection of the disclaimer. We find no abuse of discretion.

Appellant contends that under *Gregg v. United States,* 394 U.S. 489 (1969), receipt by the district judge of the affidavits prior to completion of trial disqualified the judge from further participation in the case. We disagree. The

affidavits were presented to the court in a matter respecting release of the accused on bail, and clearly were not presented or intended to serve as a presentence report to assist the court in sentencing under Rule 32(c)(1). They thus were not such a file or document as was before this court in *United States v. Montecalvo,* ..... F. 2d ..... (9th Cir. Mar. 15, 1976), and under *United States v. Duhart,* 496 F.2d 941 (9th Cir. 1974), neither Rule 32 nor *Gregg* applies.

Judgment is affirmed.

STATE OF CALIFORNIA)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, State of California, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 326½ Main Street, Huntington BEAch, California 92648, that on AUGUST 4, 1976, I served the within PETITION FOR WRIT OF CERTIORARI, etc. (Dixon vs. United States) on the following named parties be depositing the designated copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

SOLICITOR GENERAL OF THE UNITED STATES
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C. 20530 [3 copies]

UNITED STATES ATTORNEY
FOR THE CENTRAL DISTRICT OF CALIFORNIA
12TH FLOOR, U. S. Courthouse
LOS ANGELES, CALIFORNIA 90012 [3 copies]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on AUGUST 4, 1976, at HUNTINGTON BEACH, CALIFORNIA.

D. A. Standefer

Dean-Standefer, 326½ Main St., Huntington Beach, Ca. 92648
(714) 536-7161